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IN THE

Supreme Court of the United States

METRO-GOLDWYN-MAYER STUDIOS, INC., *et al.*,

Petitioners,

v.

GROKSTER, LTD., *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF *AMICUS CURIAE* DISTRIBUTED COMPUTING INDUSTRY ASSOCIATION IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICUS CURIAE*

Formed in 2003, the Distributed Computing Industry Association ("DCIA") is a non-profit trade organization engaged in the development and adoption of business and technical standards and practices to advance the commercial development of the rapidly-growing distributed computing industry, which includes peer-to-peer ("P2P") technologies.[1] DCIA Members span all sectors of the distributed computing industry, including content providers, software developers and distributors, and service-and-support companies.[2]

To develop standards and practices, DCIA Members form and participate in working groups and in DCIA moderated forums. Through these working groups and forums, interested parties (including both DCIA Members and non-members alike) exchange ideas and develop recommendations to the Membership, and ultimately the industry at large, on the establishment of business and technical standards. To date, the DCIA has addressed issues ranging from codes of ethics to security, protection of intellectual property rights, licensing, royalties, public interest, compatibility, quality of service, and other technical, legal and policy matters.

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1. The parties to this proceeding have filed with the Clerk of Court blanket consents to all *amicus curiae* briefs. Pursuant to Rule 37(6), *amicus curiae* states that no counsel for a party to this proceeding authored this brief in whole or in part. Counsel for *amicus curiae* DCIA represents two parties – Sharman Networks Limited and LEF Interactive PTY, Ltd. – to the underlying action from which this proceeding arose; however, neither are parties to the current appeal. Likewise, no person other than the *amicus curiae*, its Members, or its counsel made a monetary contribution to the preparation or submission of this brief.

2. A list of current DCIA Members which include Respondent Grokster, along with a summary of their respective business activities in the distributed computing field is appended to this brief.

While the standards and practices are voluntary, the DCIA actively continues to work on established standards and practices by:

- Advocating their adoption by businesses and Internet standards organizations
- Monitoring their implementation
- Ensuring compliance
- Resolving disputes

Additionally, the DCIA publishes the work products and findings of its working groups and serves as a resource for information, commerce, communication, and collective understanding in the public and private sector, as well as to governments and interested organizations around the world.

DCIA Members have an important stake in the outcome of this proceeding. Petitioners and supporting *amici* ask this Court in various ways to reject the legal standard – *Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984) ("*Sony-Betamax*") – that has guided companies in the development of reproduction and communications technologies for more than 20 years. In place of *Sony*, Petitioners seek new ways and offer new standards for holding developers and distributors of reproduction and communications technologies liable, not for what the developers and distributors do with the technology, but for what users of the technology do. Recognizing fundamental inequities that can result from holding one person liable for the copyright infringing acts of another, *Sony-Betamax* places commonsense limitations on secondary liability. Without the *SonyBetamax* standard, many DCIA Members would be forced to cease their innovative work.

In just the few short years that P2P technologies have been placed in the hands of the public, DCIA Members have begun to build successful and profitable businesses that depend on the distributed computing properties of P2P. For example, DCIA Members include independent music labels that rely on P2P for distributing content and for facilitating the finding of content. DCIA Members also include developers of P2P applications – some of which work in conjunction with the P2P technology at issue in this appeal – that enable licensed distribution of authorized content. Other DCIA Members include developers of payment systems for content distributed by means of P2P technologies, along with developers of digital rights management ("DRM") technologies for controlling access to P2P-distributed files.

Although P2P technologies pose a competitive threat to the "brick and mortar" content distribution systems developed over the years and controlled by Hollywood's major record labels and movie studios, the innovation associated with new, more efficient distribution and communications systems powered through P2P technologies is unparalleled. This innovation not only includes more cost-effective distribution of a greater selection of content to a wider audience than even website-based platforms achieve, but extends to a variety of businesses, from software system providers to telecommunications services. Furthermore, many of DCIA Members directly compete with Petitioner-owed *Amici*, such as MusicNet, which operate "web-based" businesses for Internet distribution of licensed content. DCIA Member companies possess competitive advantages over these *Amici* because their use of P2P distribution technologies do not require the same investment as distribution technology centered on web-based servers, and it is more popular among consumers.

Many DCIA Member companies build their P2P technologies on, or distribute their technologies through the Internet, using the P2P software applications distributed by

Respondents. If Respondents were held contributorily or vicariously liable each time a user of their software downloaded a copyrighted work without permission of the copyright owner, no company could risk development or provision of the P2P applications at issue in this case—or any other Internet communication tool. Simply put, no open computer communication protocol in the hands of computer users, including HTTP (the most widely-used communication protocol on the Internet) is immune from misuse. Without these P2P communications protocols, many DCIA-Member business could not continue operations.

SUMMARY OF THE ARGUMENT

Petitioners, and nearly all Amici supporting Petitioners, agree on a fundamental point: this Court's *Sony-Betamax* decision set the standard for determining when technology providers will be held secondarily liable for copyright-infringing acts committed by users of their technology. In fact, the *Sony-Betamax* standard has guided technology companies on the legal limitations of their innovative efforts for more than 20 years.

Secondary liability for copyright infringement does not exist for merely creating and distributing a technology capable of both misuse and substantial legal use, absent evidence of intentional participation in the infringing act. Under *Sony-Betamax*, software developers are free to create and distribute reproduction and communications applications so long as those applications are capable of substantial, non-infringing uses. In the ruling below, the Ninth Circuit applied *Sony-Betamax* correctly, affirming the Respondents' right to distribute their P2P software applications. While Petitioners now offer a number of justifications for rejecting the *Sony-Betamax* non-infringing use doctrine, each reason either misrepresents the record below or rests on a flawed legal

analysis. Indeed, most of Petitioners' justifications for abandoning the *Sony-Betamax* doctrine in this case rest on a misrepresentation of Respondents' businesses as "services." Petitioners further argue wrongly that Respondents make Petitioners' copyrighted works available for download by software users. According to the undisputed record below, however, Respondents are neither service providers nor distributors of copyrighted music and movie files. They distribute software that allows users to form networks that overlay the Internet.

The non-infringing uses of Respondents' software are both substantial and commercially significant. There simply cannot be serious debate on this issue. Petitioners do not dispute that any type of digital file can be located and downloaded with Respondents software. Nor do Petitioners dispute that any digital file, which a user of Respondents' software makes available for sharing, can be located and downloaded. This brief lists just a small fraction of the public domain works that can be downloaded with Respondents' software and the many P2P-related businesses that Respondents' software facilitates. These uses alone are more than sufficient to bring Respondents' software well with the safe harbor under *Sony-Betamax*.

Hollywood movie studios and record labels have long enjoyed a distribution monopoly. Respondents' software threatens that monopoly by providing a near cost-free distribution mechanism, which supports far more content than even web-based distribution systems. Banning Respondents' software not only would stifle innovation, it would maintain an inefficient entertainment distribution monopoly in the hands of a few major Hollywood movie studios and record labels

ARGUMENT

I. Secondary Liability For Copyright Infringement Does Not Exist For Merely Creating And Distributing A Technology Capable Of Both Misuse And Substantial Legal Use, Absent Evidence Of Intentional Participation In The Infringing Act

Sony-Betamax provides developers and distributors of copying technology with a safe-harbor from attempts by copyright owners who would otherwise seek to hold them secondarily liable for any misuse of their technology. So long as the copying technology is capable of substantial non-infringing uses, copyright owners must turn to individual wrongdoers, not the technology developers, to remedy any misuse. For more than 20 years, this safe harbor has facilitated the creation of important reproduction and communication technologies that contribute significantly to our economy. In this case, the Ninth Circuit applied the *Sony-Betamax* doctrine correctly in affirming the district court's ruling that distribution of Respondents' P2P software applications cannot result in secondary liability. Changing or eliminating the *Sony-Betamax* safe harbor for Respondents' software would unjustly extend Petitioners' copyright monopolies to an unprecedented level.

A. *Sony-Betamax* Protects Developers of Copying Technologies That Can Be Used For Legitimate, Non-Infringing Purposes

United States copyright law makes direct infringers liable for copyright infringement. 17 U.S.C. § 501. Although the Copyright Act does not impose liability for infringement on anyone other than direct infringers, this Court's *Sony-Betamax* decision affirmed that the doctrines of contributory and vicarious infringement may expand liability beyond the

actual wrongdoer, but only under "circumstances in which it is just to hold one individual accountable for the actions of another." *Sony-Betamax*, 464 U.S. at 435.

Circumstances that justly support secondary liability cannot be a moving target and still provide fair notice of circumstances giving rise to secondary liability. Rather, the limits of judicially-imposed contributory and vicarious liability must be, and have been, precisely articulated in law. In *Sony-Betamax*, this Court found the imposition of secondary liability for copyright infringement just in two circumstances.

The first circumstance justly supporting secondary liability for copyright infringement occurs when the alleged contributory infringer intentionally participates in the direct infringement. Specifically, the contributory infringer must have an ongoing relationship with the direct infringer, and must have not only authorized the infringement, but have been able to stop it:

> [T]he label 'contributory infringement' has been applied in a number of lower court copyright cases involving an ongoing relationship between the direct infringer and the contributory infringer at the time the infringing conduct occurred. In such cases, as in other situations in which the imposition of vicarious liability is manifestly just, the 'contributory' infringer was in a position to control the use of the copyrighted works by others and had authorized the use without permission from the copyright owner.

Sony-Betamax, 464 U.S. at 437. In support, the Sony-Betamax court contrasted the "so-called dance hall cases," where the imposition of secondary liability was found

just, with the "so-called landlord-tenant cases," where contributory infringement could not be imposed justly. *Id.* at n.18. As with Sony's distribution of a video tape recorder, Respondents' acts of distributing P2P software "plainly do not fall in [this] category." *Id.* at 438. Respondents, like Sony, do not provide the copyrighted materials. And, like the *Sony-Betamax* case, Petitioners here provided no evidence that any user of Respondents' software impermissibly downloaded a single copyrighted file based on the Respondents' influence or encouragement.

The second circumstance justly supporting secondary liability for copyright infringement derives from patent law. Under this doctrine, secondary liability for copyright infringement can be imposed for the "knowing sale" of copying technology, subject to an important exception. Secondary liability does not exist for the sale of copying technology so long as the copying technology is capable of substantial legitimate use:

> [T]he sale of copying equipment, like the sale of other articles of commerce, does not constitute contributory infringement if the product is widely used for legitimate, unobjectionable purposes. Indeed, it need merely be capable of substantial noninfringing uses.

Sony-Betamax, 464 U.S. at 440, 442. According to this Court, just application of secondary liability "must strike a balance between a copyright holder's legitimate demand for effective – not merely symbolic – protection of the statutory monopoly, and the rights of others freely to engage in substantially unrelated areas of commerce." *Id.* In striking that balance, this Court recognized the "critical importance" of avoiding judicial restrictions on technologies capable of both legitimate use and misuse. *Id.* at 441. This critical importance

stems from the fact that a contributory infringement finding "is normally the functional equivalent of holding that the disputed article is within the monopoly power granted" by Congress. *Id.* For this reason, the *Sony-Betamax* Court found the movie studio's arguments for holding Sony secondarily liable extraordinary:

> It seems extraordinary to suggest that the Copyright Act confers upon all copyright owners collectively, much less the two respondents in this case, the exclusive right to distribute VTR's simply because they may be used to infringe copyrights. That, however, is the logical implication of their claim.

Id. at 441 n.21.

B. The Ninth Circuit Applied *Sony-Betamax* Correctly In Affirming the Respondents' Right To Distribute Their P2P Software Applications

In upholding Respondents' right to distribute their software, the Ninth Circuit directly followed the *Sony-Betamax* analysis:

> If the product at issue is not capable of substantial or commercially significant noninfringing uses, then the copyright owner need only show that the defendant had constructive knowledge of the infringement. On the other hand, if the product at issue is capable of substantial or commercially significant noninfringing uses, then the copyright owner must demonstrate that the defendant had reasonable knowledge of specific infringing files and failed to act on that knowledge to prevent infringement.

MGM Studios, Inc. v. Grokster Ltd., 380 F.3d 1154, 1161 (9th Cir. 2004).

On the record below, the district court found no material factual dispute regarding substantial non-infringing uses of Respondents' software. *MGM Studios, Inc. v. Grokster, Ltd.*, 259 F. Supp. 2d 1029, 1035 (C.D. Cal. 2003). For example, the district court pointed to numerous types of content exchanged with Respondents' software, including both files in the public domain and copyrighted files made available with the owners' permission. These files included movie trailers, music files, works of Shakespeare, and government documents. *Id.* Petitioners offered no facts disputing the ability to locate and download these works with Respondents' software. To the contrary, Petitioners' evidence offered in response consisted solely of declarations by "experts" reciting the quantity of unauthorized, copyrighted files they were able to locate by conducting various searches using Respondents' software compared with the quantity of authorized and public domain files that these "experts" were able to locate. Even with the slanted search techniques that Petitioners' experts employed, the district court found, and the Ninth Circuit affirmed, that no genuine issue of material fact existed regarding non-infringing use. *Grokster*, 380 F.3d at 1161.

Holding Respondents secondarily liable for copyright infringement under these facts would do exactly what this Court cautioned against in *Sony-Betamax*: It would expand Petitioners' monopolies over their motion pictures and sound recordings well beyond the works themselves to include the P2P software applications at issue. Effectively, Petitioners would become the de facto owners of Respondents' software, with the exclusive right to control distribution and use of the software, simply because the software can be used to infringe copyrights.

While unprecedented, Petitioners' attempt to impose copyright infringement liability on Respondents for distributing P2P software is even more extraordinary. Because

the software at issue indisputably allows a user to locate and download any file from another computer user running the same software protocols, Petitioners' requested relief would effectively extend their copyright monopoly over not only Respondents' software, but over the computer files that can be exchanged with the software, including computer files containing public domain works. Beyond these files, imposing secondary liability would expand Petitioners' copyright monopoly to effect a ban on a host of new businesses that depend on both the unrestricted distribution of P2P software and on the networks that users of the software form.

C. Petitioners' Justifications For Abandoning the *Sony-Betamax* Non-Infringing Use Doctrine In This Case Are Unavailing

Attempting to justify a sweeping extension of monopoly rights, Petitioners offer five reasons why this Court should reject the *Sony-Betamax* non-infringing use doctrine in this case. (Brief For Motion Picture Studio and Recording Company Petitioners ("Petitioners' Brief") at 30-38.) Each reason either misrepresents the record below or rests on a flawed legal analysis.

1. Petitioners argue that the non-infringing use analysis under *Sony-Betamax* does not apply to Respondents because the "business of Grokster and StreamCast is the unlawful world-wide *distribution* of perfect digital copies of copyrighted music and movies among strangers for free, resulting in viral redistribution." (Petitioners' Brief at 30-31, emphasis in original.) Petitioners' description of Respondents' business is false. Both the district court and Ninth Circuit squarely rejected Petitioners' attempt to recast Respondents' development and distribution of P2P software into a music and movie distribution service. Respondents

create and distribute P2P communications software, which allows ***users*** to form networks that overlay the Internet. No evidence before the district court or elsewhere remotely suggested that Respondents made available any of Petitioners' copyrighted works for downloading by others. Indeed, the only suggestion that Respondents provide any type of music and movie downloading service is contained on Petitioners' legal argument.

Even the question Petitioners present to this Court – whether the Ninth Circuit erred in concluding that Respondents' file-sharing "services" should be immunized from copyright liability – falsely implies that Respondents offer free movies and music, rather than distribute software that allows users to locate and download any type of file without accessing a website central server.[3] Of course, if Respondents actually operated services that distributed Petitioners' copyrighted files, there would be no need to rely on doctrines of secondary liability; direct infringement would exist. Petitioners misleadingly describe Respondents' businesses as file-sharing or distribution "services" not to impose direct liability, but for another reason: By saying that

3. Petitioners' misleading description of what Respondents do permeates throughout each *amicus* brief supporting Petitioners. For example, the United States' *amicus* brief rests on the incorrect premise that Respondents "build P2P networks" – networks that, once built, somehow belong to, and are administered by Respondents. (Brief for the United States at 3, 6.) Yet the record establishes that Respondents neither build nor own nor administer networks. Other *amici* simply argue from the same premise as Petitioners, asserting that Respondents provide movie and music distribution services. If Petitioners' brief and the brief of each *amici* is read substituting what Respondents really do – distribute software that allows the users to form their own, self-administrating communications networks within the framework of the Internet, which neither Respondents or anyone else "owns" – each argument for imposing secondary liability fails under its own reasoning.

Respondents engage in a copying "service" rather than provide copying technology, Petitioners suggest that the full protection of the *Sony-Betamax* non-infringing use doctrine should be inapplicable to Respondents' software. Petitioners' argument in this regard proves only that if you ask the wrong question you get the wrong answer.

2. Petitioners argue that "separating mechanisms" – presumably some sort of "filter" – can be employed to block infringing uses while still allowing for non-infringing uses. (Petitioner' brief at 32-33.) Like Petitioners' first argument, this "filtering" argument rests on the incorrect assumption that Respondents both distribute Petitioners' copyrighted works, and operate or administer file-sharing networks. Furthermore, nothing in *Sony-Betamax* suggests that an exception to the substantial non-infringing use test applies if the provider of copying technology can redesign it to limit or stop the infringement. Indeed, if that limitation to the non-infringing use test exists, VCRs would be outlawed today, for certainly the technology exists to place "separating mechanisms" in VCRs. Moreover, whether a copying technology could be provided to consumers without fear of secondary liability might change from day-to-day as new "separating" technologies were developed. Accordingly, the Ninth Circuit has correctly recognized that secondary liability for distributing copying technology must be "cabined by the system's current architecture." *A&M Records v. Napster, Inc.*, 239 F.3d 1004, 1024 (9th Cir. 2001). Petitioners' argument also ignores a law of physics: For each action there is an equal and opposite reaction. This principle has particular applicability to computer technology. With each "separating mechanism" employed, new and better way to circumvent will be developed. Finally, Petitioners' "separating mechanism" argument presumes that enough non-infringing files exist to allow for meaningful separation from infringing files – a tacit if not express admission that Respondents' software is currently used for legitimate, non-infringing purposes.

3. Petitioners argue that the non-infringing use test does not apply if the "primary" use is infringing and that the Respondents' software lacks commercial viability absent the infringement. (Petitioners' Brief at 34-35.) But the *Sony-Betamax* test has no "primary use" element. To the contrary, the *Sony-Betamax* Court expressly referred to patent law cases rejecting the extension of the patent monopoly under the guise of contributory liability unless the unpatented articles are "unsuited for any commercial noninfringing use." *Sony Betamax*, 464 U.S. at 441 (citing *Dawson Chemical Co. v. Rohm & Hass Co.*, 448 U.S. 176, 198 (1980)). Accordingly, in the copyright context, this Court emphasized that copying equipment could be sold without imposition of secondary liability if the equipment is "merely ... capable of substantial noninfringing uses." *Id.* at 442. Following *Sony-Betamax*, the Ninth Circuit ruled that a copying product can be distributed if it is capable of either substantial or commercially significant non-infringing uses. *Grokster*, 380 F.3d at 1161. In any event, Petitioners offered no evidence regarding the "viability" of Respondents' software absent the ability to download unauthorized, copyrighted files. Thus, Petitioners' contention that nobody would continue to use Respondents' software absent the ability to copy Petitioners' works is both irrelevant and unsupported.

4. Petitioners argue that the "mere capability" test cannot be squared with the holding of *Sony-Betamax*. Whether it can be squared or not – and of course it can – that is the test this Court articulated and the test that has guided the development of technologies capable of making reproductions, especially in the digital age, for more than 20 years.

5. Petitioners argue that the Ninth Circuit "exaggerated" the evidence of non-infringing uses. Contrary to Petitioners' argument, the record contains substantial evidence of

non-infringing use. As discussed *infra*, each day the list grows longer. There simply cannot be serious debate on this issue. Petitioners do not dispute that any type of digital file – from music files, to video files, to word processing files, to image files, to spreadsheet files, to software files – can be located and downloaded with Respondents software. Nor do Petitioners dispute that any digital file, which a user of Respondents' software makes available for sharing, can be located and downloaded. Finally, Petitioners' argument lacks relevance: The test is not how many non-infringing files could be located at the time the district court ruled. Rather, the test is whether Respondents' software is capable of locating and downloading noninfringing files.

II. The Non-Infringing Uses Of Respondents' Software Are Both Substantial And Commercially Significant

Respondents' software allows users to locate and download virtually any computer file directly from another user of the same communications protocols. This particular distributed computing technology, which requires no central website servers, has enormous commercial potential. The ability to make content available without a web server improves the ability to locate content. It also allows for more efficient content distribution and maintenance of a larger inventory of available content files than centralized distribution architectures can support. Rather than placing all bandwidth cost on the original distributor, with P2P technology the distribution cost is spread among millions. Spreading distribution costs gives content owners far more flexibility in making their works available to the public. P2P has empowered not only content providers, but also has spawned many new business applications that utilize the distributing computing technology that forms the core of Respondents' software.

Examples of substantial and commercially significant uses of Respondents' software are too numerous to recite in this brief. Some of the more important uses for both content distribution and business applications are described below:

Altnet (*www.Altnet.com*)

Altnet provides search indexing and directory technology for distributing secure, licensed content with P2P software applications. Altnet bundles its technology with the Kazaa Media Desktop ("KMD"), Grokster and eDonkey P2P applications. Content owners license their digital files to Altnet, who then "wraps" the files with DRM technology. With DRM technology, content owners have full control over the terms by which the particular electronic file can be opened and used by a person accessing the file, including the option to require payment before opening. Once "wrapped," Altnet loads the DRM-protected files onto its servers and records the file's hash value (a "logical fingerprint" derived from the contents of the file) into an Altnet database. Each copy of the P2P application containing Altnet's technology incorporates a copy of the Altnet database index, which is periodically updated. When a P2P application user conducts a search, the search terms are examined against the local Altnet database index (along with the P2P network that the particular application accesses). If a search term matches an entry in the Altnet database index, the database entry is displayed to the user. With Altnet's "TopSearch" technology, the Altnet file is displayed with a "gold icon" in first priority position on the search results screen. If the P2P user selects a gold icon file for downloading, the file is obtained directly from another computer user running a P2P application that has already downloaded the file. If no other user has the file, it can be downloaded directly from Altnet's servers initially, and subsequently redistributed with P2P software programs.

Before a user can open the file after downloading, consent must be given to the DRM license terms, and the user must comply with any payment terms or other conditions required by the copyright owner. To support payment, Altnet incorporates a secure transaction payment gateway technology into its application. Various payment options built into the payment technology give content owners the flexibility to choose payment and currency types. Altnet's technology further includes a loyalty incentive program. Users accumulate "points" for downloading and making available for further distribution Altnet authorized "gold icon" DRM files. Users can redeem accumulated points for various awards and other benefits, thus encouraging the exchange of licensed files even if the same content could be found from other computer users in an unlicensed format.

Altnet is the largest provider of secure DRM content on the Internet, issuing up to 300,000 DRM licenses each day to users of P2P applications. Since bundling with the KMD and Grokster, Altnet has obtained and provided thousands of works from music artists, film makers, and computer game publishers, including:

➢ *Distribution of video games.* Altnet is a leader in distribution of authorized video games through P2P applications, including trial copies that can be purchased after sampling for a limited period. In a single representative month, Altnet's distribution of Infogrames' (now Atari) trial copies generated over 90,000 downloads.

➢ *Distribution of licensed feature films.* Altnet has distributed authorized movie trailers for major motion pictures through several P2P applications, such as trailers for "Rules of Attraction" and "Confidence" from Lions Gate Films. It also distributes promotional

videos and authorized documentaries from studios and distribution companies such as Palm Pictures and Cine-Courts.com, a French movie distribution company.

➢ *Distribution of licensed music.* Altnet distributes licensed music from individual artists and recording labels. Representative labels include Cornerband (a community of thousands of independent artists and bands), 301 Records (an Australian independent recording label), VZ Records, Arternis Records, Epitaph/Anti Records, Siche One Dummy Records, Palm Records, and Koch Media. Independent artists include Ice-T, Johnny Virgil, Brooke Allison, and Barrington Levy. With the ability to quickly and efficiently reach millions of P2P users worldwide, many artists and labels have elected to debut recordings through Altnet.

Skype (*www.skype.com*)

Skype is the first Internet telephony technology to use P2P distributed computing. P2P telephony utilizes decentralized networking technology to significantly increase call completion rates compared with more costly, centralized voice-over-IP technologies. Skype allows for free calls to other Skype users, paid calls to land and cellular telephones, file transferring, and instant messaging. Skype relies on P2P technology not only for completing phone calls, but also for distributing its telephony software by bundling its application with popular P2P software.

BullGuard (*www.Bullguard.com*)

BullGuard develops and distributes antivirus software. BullGuard has developed an antivirus application that operates with P2P applications, detecting and quarantining files that may contain computer viruses. In examining files made available to other computer users with P2P software,

BullGuard helps protect P2P users against distribution of known computer viruses. Besides providing this service to P2P users, BullGuard also relies on P2P technology for distribution of its application and for updating virus definitions. Using P2P technology for distributing and updating virus definitions gives BullGuard a significant competitive advantage over antivirus applications that use more costly central servers for this function.

Shared Media Licensing, Inc.'s Weed
(www.weedshare.com)

Shared Media Licensing operates the DRM technology known as "Weed". When a file is protected by Weed technology, that file may be played up to 3 times for free. After this, if the user wishes to continue to play the file, he or she must pay for it. The price for any given file is set by the rights holder. The file can be copied to other users for free, whether across the Internet or otherwise. If the file is copied onto another machine, the file can again be played 3 times without payment. When a user purchases a file, the rights holder receives 50% of the money paid by the purchaser and 15% of the purchase price goes to Shared Media as a processing fee. The remaining 35% of the purchase price is shared among those who previously purchased and distributed the music. This payment system is designed to encourage users to actively distribute authorized files.

A band wishing to use the Weed distribution system must provides a copy of its recording to a Weed Independent Content Provider ("ICP") and signs a Rightsholder Agreement. Once protected with the Weed DRM technology, the file can be distributed across the Internet in any fashion, including by means of P2P software. Because files using Weed's DRM technology are designed to be downloaded as often and as extensively as possible, P2P applications such

as those distributed by Respondents provide an effective way to increase distribution. Not only is it legal to distribute Weed files in this way, it is beneficial to do so. For example, the more a music file is distributed, the more money the artist will make from that file and the more fans that artist will gain in the process. At this time, Weed has over 110 different Weed ICPs around the world. These ICPs manage over 6,000 artists, who among them have provided over 50,000 files to be protected and distributed with Weed technology. One notable example is the popular Sovereign Artists' band Heart, which released its latest album – "*Jupiters Darling*" – with Weed protection. Within hours of release, *Jupiters Darling* received widespread distribution through P2P networks.

Creative Commons *(www.creativecommons.org)*

Creative Commons is a non-profit corporation based at Stanford University Law School. Through "open content" licenses, Creative Commons provides licensing frameworks for the distribution of copyright material across the Internet. The "open content" licenses are designed to promote flexibility in the use of copyright material across the Internet, allowing the licensee to use the copyright subject matter on the basis of one or more conditions. Initially, these conditions included (a) attribution be given to the creator of the copyright material; (b) distribution of the copyright material be non-commercial; (c) that no derivative materials based on the copyright material are made; and/or (d) "share and share alike", that is, recipients of the copyright material may make and distribute derivative materials under a license identical to that which covers the original material. Subsequent to the development of these licenses, Creative Commons penned additional options for licensing conditions, including a "Public Domain Dedication License," a "Developing Nations License," a "Sampling License," and a "Music Sharing License."

Issuance of a Creative Commons license allows a copyright owner to place the copyright material in the "commons" (*i.e.* the public domain) using the Internet. The Creative Commons license provides that anyone can reproduce or use the copyrighted material subject to one or more of the licensing terms. Further, the Creative Commons license can be presented in common, legal, or digital code language – by simply going to www.creativecommons.org and choosing a license on-line. This license is then linked to the copyrighted material that the licensor wishes to license out through the Internet. When the Creative Commons license is presented in common language, it appears on a user's computer as a simple, plain-language summary of the license terms, complete with relevant screen icons to clearly indicate to potential users what rights they have under the license. The legal code sets out the terms and conditions of the license in full and the digital code is a machine-readable translation of the license, which can be attached to digital content.

P2P file-sharing software is used extensively for distribution of Creative Commons works, especially for large music, picture, and movie files that the authors might not have the bandwidth or tools necessary to distribute themselves. Statistics produced by Creative Commons state that over a million objects already have been released under Creative Commons licenses, and the Common Content catalog contains over 3,000 records. Examples of Creative Commons license usage include:

- Wired Magazine, which distributes a list of artists and bands containing works available under Creative Commons licenses, including "The Beastie Boys;" David Byrne (former member of the band "Talking Heads"); Chuck D (formerly of "Public Enemy" and now with "Fine Arts Militia") and Gilberto Gil.

- Opsound, an experimental record label headquartered in New York.

- SoundClick, one of the largest music community websites on the Internet.

- The Oyez Project, an archive of recorded oral arguments and bench statements in the United States Supreme Court.

- BBC Creative Archive, which announced plans to allow download clips of BBC factual programs for non-commercial use.

- Berklee Shares College of Music, the world's largest independent music college.

Internet Archive *(www.archive.org)*

The Internet Archive is a digital library of Internet sites and other cultural artifacts in digital form. Like a paper library, it provides free access to researchers, historians, scholars, and the general public. Archive partners include the Library of Congress, the US National Archives and Records Administration, National Archives of Britain, and the Library of Alexandria in Egypt.

The Archive currently hosts approximately 60,000 books, music, software, and video items, each often comprising many files corresponding to songs or textual works or movies from a large number of sources. These sources comprise a large number of video files collections, including a feature-film collection of over 300 public domain feature-length films and over 1,100 films contributed by patrons of the Archive. The Archive further contains a collection of public domain and Creative Commons licensed material relating to the 2004

United States Presidential Election, an Open News Network, and a host of educational material, such as course lectures. The Archive's extensive audio collection hosts thousands of public domain and Creative Commons files, including conference proceedings, radio news programs, historical presidential recordings, music recordings, poetry readings, and audio books. Finally, the Archive hosts more than 25,000 public domain and Creative Commons texts through a set of digital libraries, including children's books from around the world.

Because of the tremendous volume of material available through the Internet Archive, the costs associated with data storage and bandwidth on Archive servers could easily exceed the resources available. This is particularly true for popular works. Additionally, server congestion and capacity limits the Archive's ability to distribute works. Accordingly, the Archive has turned to P2P technologies, including the Respondents' software, for more cost effective distribution, particularly for large multi-media files.

Project Gutenberg *(www.gutenberg.org)*

Project Gutenberg is the oldest producer of free electronic books (eBooks or eTexts) on the Internet. Its collection of more than 13,000 eBooks was produced by hundreds of volunteers and comprises older literary works that are in the public domain in the United States. Project Gutenberg also hosts over 12,000 audio files representing over 200 unique titles (including audio books and music) and a few short movies. While the majority of audio files are readings of books, some music files, including over 100 MP3 files of digitized audio files are available from wax cylinders originally produced by the Edison Company. All Project Gutenberg materials may be freely downloaded and read, and redistributed for non-commercial use.

To assist in distribution at a lower cost, Project Gutenberg makes use of P2P file-sharing software. Numerous authorized and public domain Project Gutenberg eBooks have been distributed with Respondents' software as well as other P2P programs. Indeed, some P2P software distributors provide links through the application directly to the Project Gutenberg website.

Project Gutenberg's support for P2P file sharing is well-documented. Authorization to distribute Project Gutenberg material is expressly stated on its website at www.gutenberg.net/howto/p2p-howto. Moreover, Project Gutenberg added magnetlinks to the webpage for each eBook and many other files. Magnetlinks are an open standard for P2P file sharing. (*See* www.magnetlinks.org.) With a magnetlink plug-in to a standard web browser, clicking on a magnetlink will automatically search on all P2P networks supported by the user's computer and, if the file is found, provide the ability to download the file from another computer user rather than the Project Gutenberg website. This provides users with a download option that might be faster or more robust than regular HTTP or FTP downloads.

O'Reilly Media Inc. (*www.oreilly.com*)

O'Reilly Media is the third-largest computer book publisher in the United States. O'Reilly Media's online publishing division manages websites such as java.net, Perl.com and XML.com. O'Reilly Media also has a conference arm, hosting the popular Perl Conference, the Open Source Software Convention, the O'Reilly Emerging Technology Conference, and the Web 2.0 Conference.

O'Reilly Media makes electronic files freely available for distribution with P2P software. These files include substantial portions of all of its books as an incentive to

purchase the complete text. The files also include the whole of some books, which O'Reilly Media makes available without restriction to build awareness of products that might otherwise be ignored and to build brand loyalty among online communities.

INTENT MediaWorks (*www.intentmediaworks.com*)

INTENT provides a legal and secure means of distribution for commercial entertainment and corporate materials via P2P technologies. After content owners sign a non-exclusive distribution agreement with INTENT and submit the relevant content to INTENT on digital media, INTENT converts the content into a digital format and attaches DRM copy protection software to the media to prevent copying and sharing of the file without authorization. Once DRM protected, the file is hosted on INTENT computer servers which, with various P2P software applications, seed the content directly into P2P networks and through P2P service providers such as Altnet. Computer users can then download the content with P2P software, including Respondents' applications.

When a computer user downloads an INTENT file, the user can legally obtain its content through several methods. First, the downloader can opt for a use license, which requires the consumer to accept advertising messages at either the beginning of a piece of content's play or upon its completion. Alternatively, the consumer can opt to purchase a non-advertising-supported license for a price determined by the content rights holder. INTENT also offers artists several options to promote and market their works. Today, INTENT represents 250 artists with over 5,000 songs. These include both new artists seeking exposure and commercially established artists such as Heart, Willie Nelson, and Garth Brooks seeking new ways to distribute their music. Finally,

INTENT distributes over 1,000 short films and over 10) books through P2P networks.

Prelinger Archives *(www.prelinger.com)*

Prelinger Archives is a collection of approximatel 50,000 "ephemeral" (advertising, educational, industria documentary, and amateur) films produced between 1903 an 1990. This collection was owned by Prelinger Archives unt it was acquired by the United States Library of Congress Motion Picture, Broadcasting and Recorded Sound Divisio in 2002. Though much of the physical film material nov resides at the Library of Congress, Prelinger Archives retain the right to copy and to exploit this collection commercially Prelinger Archives also continues to acquire additiona moving images and engage in the stock footage business furnishing footage to the media production community i various videotape and digital media formats. Approximately 60% of the material collected by Prelinger Archives reside in the public domain without any copyright restrictions. O the remaining material, Prelinger Archives own rights to approximately 5%, while the other 35% is currently under copyright and available for on-site reference use only. Like Project Gutenberg, authorized files from the Prelinger Archives are permissibly distributed with P2P software to save bandwidth and avoid web server congestion.

III. Banning Respondents' Software Would Stifle Innovation And Maintain An Inefficient Entertainment Distribution Monopoly In The Hands Of A Few Major Hollywood Movie Studios And Record Labels

Imposing secondary liability on distributors of P2P software, such as Respondents, would destroy one of the most efficient and promising distribution mechanisms ever developed, killing an exciting new technology in its infancy.

Even then, computer users would still find ways of exchanging files directly among each other without accessing central web servers. Likewise, when such ways would be employed, some computer users would continue to exchange copyrighted content. After all, the ability to exchange files among individual computer users is not simply a byproduct of the Internet; rather, the Internet itself developed from that technology. Respondents' software simply placed this technology in the hands of everyday computer users with an easy-to-use interface, much as the advent of web browsers allowed unskilled computer users to find content on websites.

At bottom, Petitioners seek to prohibit or control all technologies that facilitate exchanges directly among individual computer users, requiring instead that all traffic be routed through less efficient web servers. Petitioners' efforts to impose judicial restrictions on the flow of worldwide Internet traffic under the guise of protecting copyrights is more extraordinary than their effort 20 years ago to ban VCRs. Nor is it needed. Petitioners have demonstrated proficiency in enforcing their copyrights against individual direct infringers without resorting to secondary liability doctrines. Moreover, even if it were possible to stop all exchanges of copyrighted files with P2P applications, infringement of Petitioners' works would continue largely unabated. Far more infringement of Petitioners' copyrighted works likely takes place though street-corner sales, email exchanges, website downloads, instant messenger transmissions, and CD burning – with services and equipment that some Petitioners themselves provide – than with Respondents' P2P software applications. Petitioners have even consented to statutorily-authorized infringement in the Audio Home Recording Act. *See* 17 U.S.C. § 1008 (immunizing consumers from copyright infringement actions based on copying of musical recordings with digital or analog audio recording devices).

Petitioners do not seek to impose secondary liability on Respondents simply because their technology allows files on one computer to be downloaded onto another. Respondents' software, and the many businesses that have emerged to harness the power of digital computing over the Internet, pose a threat to Petitioners' own "brick and mortar" movie and music distribution systems. Hollywood major movie studios and record labels have long understood that their profits are directly tied to their ability to monopolize distribution. After all, Petitioners are not the creators of the copyrighted works at issue; they are simply the assignees and licensees of copyrights to the works. As such, they have but a single means for deriving revenue: control of distribution. Respondents' software, which potentially allows every computer user on the Internet to become a distributor, jeopardizes Petitioners' distribution monopoly. But developers of computer technology, particularly Internet and distributed computing technologies, have relied on the protections set forth in *Sony-Betamax* for over 20 years. Now that computer technology has advanced to a point where unprecedented amounts of information can be efficiently placed in the public's hands, the *Sony-Betamax* doctrine should not be abandoned so that Hollywood can maintain a distribution monopoly for its music and movies. If the Ninth Circuit is affirmed, Hollywood will surely adapt, and find new ways to monetize their works, just as it did with VCRs.

CONCLUSION

The decision of the Ninth Circuit should be affirmed.

Respectfully submitted,

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APPENDIX

ADDENDUM: DCIA MEMBERS

Alston & Bird Founded in 1893, Alston & Bird is a major US law firm with an international practice in areas ranging from antitrust and investigations, to capital markets and investments, to entertainment and new media, to Internet and e-business, to technology and telecommunications. One of the key areas of interest is its extensive intellectual property practice. Its attorneys include Senator Bob Dole, former Chief of SEC's Office of Mergers and Acquisitions Dennis Garris, numerous former examiners from the US Patent and Trademark office, and more than 130 attorneys practicing IP law 100% of the time.

Altnet, Inc. A subsidiary of Brilliant Digital Entertainment, Inc. (AMEX:BDE), Altnet is the leading provider of secure digital media via peer-to-peer (P2P) technology and the largest distributor of licensed content on the Internet today. It currently conducts 50 million licensed transactions monthly through P2P technology, primarily with content provided by small progressive independent music labels, movie studios, and games distributors. Through its "TopSearch" software, bundled with leading P2P software applications, Altnet reaches an estimated 80 million Internet users and is the largest issuer of digitally rights-managed music in the world.

Bennett Lincoff Law Bennett Lincoff Law is a New York-based intellectual property law firm. Principal Bennett Lincoff is also a consultant and writer who has been a pioneer in creating legal structures and business models to protect and use intellectual property in digital media. He specializes in licensing, rights counseling, the Internet and new media, regulatory and legislative matters, and legal reform. Mr. Lincoff is the former Director of Legal Affairs for New Media at ASCAP, and the author of ASCAP's Internet license

agreement. He also served as Senior Consultant at the International Intellectual Property Institute, and as a co-chair of the ABA delegation to the WIPO deliberations that led to adoption of the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty.

BlueMaze Entertainment Founded in early 2000, BME is a progressive music label. BME's value is its network of artists, producers, composers, engineers, affiliate labels, and lifestyle-marketing agents. BME has emerged as an innovative thought leader and production engine for the next generation of independent music. With its recording studios in New York and Atlanta, BME identifies and nurtures a wide variety of commercially viable sounds and styles, developing ed several highly successful music marketing programs, including promotional CD and event series for the Enyce Clothing Company and music licensing and composition for Jansport, Factor X, Old Navy, Nike, and Canon. In addition, BME has launched emerging artists Jawz of Life, TrancesArc, Eject, and Maya Azucena.

Claria Corporation Claria is the leader in online behavioral marketing, serving over 40 million consumers and more than 900 advertisers – including over 80 Fortune 1000 companies. Claria publishes advertising messages for top tier companies and agencies to consumers who are part of the GAIN Network, Claria's network of over 40 million consumers who agree to receive advertising based on their actual online behavior. In addition to its advertising network, Claria provides marketing research and business insights through its Feedback Research division.

Clickshare Service Clickshare is a commerce platform for enabling peer-to-peer (P2P) transaction payment

aggregation. Its affinity payment system supports single-bill, multi-source purchases of digital content and e-commerce, with relationship management and privacy-enhancing features. Clickshare was founded on the conviction that people will pay for digital content if given an easy and safe way to purchase what they enjoy.

Digital Containers DCI creates and distributes digital rights management (DRM) software, allowing organizations and individuals to profitably package, protect, distribute, and monetize all types of digital content in P2P distribution. DCI's DRM software operates on any device with a web browser/java virtual machine, including computers PDAs, and cell phones.

Digital Static DSI produces multimedia commercials, writes songs, and creates new music and multimedia products. Its creative properties are produced in its Detroit-based studio.

Good Witch Records GWR is a progressive music label founded by performing artist Glenda Benevides, which has operated since 1999 in partnership with production company In The LITE Productions. GWR has produced albums, concerts, and music videos.

Go-Kart Records Go-Kart is an independent punk label based in New York and Los Angeles. Go-Kart has released several full albums online, and published the GO-KART MP300 RACEWAY, a $10 MP3 CD with 150 bands and 300 songs.

Grokster Ltd. Grokster offers advanced P2P file-sharing software that enables users to distribute digital files, including images, audio, video, games, reports, and

documents. Content developers and owners may easily broadcast their files to a global audience using Grokster software. Grokster is a privately held international software company providing cutting edge person-to-person software through the FastTrack P2P Stack. Grokster's software also includes the Altnet TopSearch functionality.

Indie911 Indie911 has pioneered a streaming-audio system that pays royalties to artists for their online airplay. Featuring some of the world's best independent music, Indie911 also offers syndicated radio programming, including its flagship show "indie cent xposure radio," and a comprehensive online music licensing and distribution system called Agro Free Licensing Program (AFLP). It now boasts a catalog of over 15,000 songs, all listenable (and many licensable) with a single click. On average a new artist joins the homepage every hour in the newly added sign-up column on the Indie911 site. Indie911 is now focusing on P2P file-sharing for distribution.

INTENT MediaWorks Based in New York and Atlanta, IMW is a privately held distributed media company designed to help partners tap into and profit from secure distribution and commercialization of digital media. IMW is establishing a standard for legal, secure, and profitable distribution of digital media, and carving a niche as a trustworthy steward and savvy marketer of digital content. To date IMW has signed more than 300 small independent music labels and performing artists as content suppliers.

Javien Javien is a leader in the Internet commerce market for paid digital content. A first mover with micro-payment processing technology in 2000, Javien Digital Payment Solutions now offers total payment solutions to content-rich websites. Javien's ASP service, supporting

subscription and pay-per-view payments, is a proven, seamless, immediate solution for turning web content into profits, from articles and publications to movies and music. Javien's customers in the music industry include MusicNet, TransWorld Entertainment, and iMesh.

Jeftel Jeftel is a UK based software firm that developed and offers Jeftel Secure E-Mail, a peer-to-peer (P2P) software product, which provides a new format for safe, secure communications from within the familiar interface of most regular e-mail client programs. Jeftel's technology utilizes the random nature of UDP packet flow to enhance security and versatility over the traditional TCP/IP transport employed by most e-mail systems. The solution gives end-users full control of their e-mail server by placing it on their PCs. Jeftel Secure E-mail bases its framework on providing a 'soft' mail server with an encryption engine. Consequently Jeftel users do not require either a corporate or an ISP-based mail server for e-mail transmission.

Jun Group Jun Group is now a leading distributor of free licensed content in the global file-sharing community. Its patent-pending process delivers high-quality music, television, film, and video games to millions of consumers around the world who share files via P2P software programs and other applications. Last year, Jun Group brokered a deal that promoted Steve Winwood's music in the P2P marketplace sponsored by Hearst-Argyle's "Access Hollywood." Currently, the Jun Group distributes sponsored content to millions of consumers. Jun Group's clients include Cadbury Schweppes, PALM Entertainment, NBC Enterprises, and others.

MasurLaw MasurLaw is an intellectual property and business law firm, which has served some of the most

innovative new companies in the entertainment and information technology sectors during the past ten years. Examples include digital music services, record labels, massively multiplayer games, independent films, mobile entertainment, payment systems, and finance.

MusicDish Network MusicDish is the first true independent web music network. Representing a unique platform of over 200 entertainment-related sites from three continents, MusicDish produces and distributes original content focusing on today's emerging artists, plus news and insights from music veterans and experts. Most recently, the MusicDish Network pioneered a new artist-branded customized P2P offering in collaboration with RazorPop and the artist Yohany.

One Love Channel OLC, owned and operated by Blue Mountain Interactive Ltd., distributes licensed and DRM-protected reggae music and videos via P2P. OLC retains global rights for the music it distributes. Its initial aim is to become the largest source of reggae and dancehall music on the Internet.

P2P Cash P2P Cash is the first company to leverage proprietary business rules and integration with public standards for financial information interchange (XML and Web Services) to create the Intelligent Cash Unit (ICU) standard for P2P direct payment systems. With its patent-pending ICU, P2P Cash acts as a digital container to manage business rules associated with P2P transactions, including electronic contracts, and to secure distribution of digital products.

Predixis Based in Monrovia, California, Predixis offers an acoustical solution for entertainment media file

identification and management in P2P environments. Its MusicMagic patented technology has been developed to manage digital libraries of music based on inherent sounds. MusicMagic manages music not only by artist, album, or genre, but also by key musical attributes. MusicMagic can further automatically identify key attributes of any song in any digital format and can be delivered across different media and devices ranging from PCs to portable handhelds. It performs automatic scalable music analysis connecting to a nearly two-million song attribute database, developed to accommodate very large music collections. Predixis software complies with industry APIs and works on a variety of chipsets, including MP3, WMA, Ogg Vorbis and Flac. Currently, MusicMagic Mixer functions as a customizable desktop application in which its revolutionary matching technology enables users to create custom playlists based on sound. MusicMagic Web Service provides communication between the attribute database and the client application very rapidly over the Internet.

Project V-G (Venezia-Gondola) Project V-G is an application framework for peer-to-peer (P2P) commerce. Started by the publisher of the affiliated P2P Journal, Project V-G adds "bartering" and "goodwill" functions in addition to regular monetary based online transactions with three components: a P2P commerce network called "Venezia Network", a P2P commerce engine called "Venezia", and a graphic user interface call "Gondola". Project V-G also uses a new computing model called the inverted model-view-controller (IMVC) pattern. In operation, Project is an open-source project, allowing developers to write their own user interfaces (UI), i.e. "skins" for "Gondola."

Rap Station Launched in September 1999 as a multi-format web "supersite," Rap Station is a home for the vast

global hip-hop community. The site boasts a TV and radio station with original programming, a slew of hip-hop's most prominent DJs, celebrity interviews, free MP3 downloads (the first was contributed by multi-platinum rapper Coolio), social commentary, current events, and regular features dedicated to empowering rap artists with the knowledge to turn their craft into a viable living. The site grew out of the critical and commercial success of Public Enemy, which became the first multi-platinum selling act to release its album via the web before it was available in retail stores. Rap Station has partnered with Altnet to distribute content via P2P networks.

RazorPop An Internet marketing, technology, and entertainment company, RazorPop develops innovative software and related service offerings for digital entertainment consumers and businesses. RazorPop recently announced the release of its TrustyFiles 2.1 peer-to-peer (P2P) file-sharing software that provides multiple network access, including the FastTrack network used by Kazaa and Grokster. Three modes of operation are available to TrustyFiles' users: Personal File Sharing for exchanging files with a defined user group, Private File Sharing to protect confidential files, and Public File Sharing to search for hundreds of millions of files among TrustyFiles, Kazaa, Grokster, eDonkey, Overnet, iMesh, Morpheus, Limewire, BearShare, Shareaza, and other FastTrack and Gnutella network users.

Relatable Founded in 1999, Relatable is a software company and located in Alexandria, Virginia. Relatable has developed advanced acoustic fingerprinting software for digital music using proprietary technology to perform complex pattern analysis and identification of audio media. Its software is based on a series of advanced pattern

recognition, content identification, indexing, and search technologies, functioning as a "digital barcode" for music and media content. Relatable is now developing additional applications for the P2P marketplace that take advantage of the exceptional performance, scalability and cost-effectiveness that is unique to its technology.

Seamless P2P Seamless P2P provides P2P networking solutions using proprietary, private secure technology. Its technology allows both companies and individuals to easily and cost effectively create private, secure P2P environments among PCs over local area networks (LANs), wide area networks (WANs), virtual private networks (VPNs), wireless networks (Wi-Fi), and the Internet. Seamless P2P uses its PeerSystem technology to create a private, encryption-secured P2P backbone. This backbone enables corporate and home users to safely share information and data anywhere in the world through direct P2P access. Seamless P2P's flagship Phenom product was downloaded over 300,000 times during its first three years of availability.

Shared Media Licensing SML is a group of musicians and software developers based in Seattle, Washington. Through its "Weed" service, SML allows Internet users to purchases files at artist-established prices, which included the right to redistribute the files. SML compensates end-users for redistributing Weed encrypted music files, with rights holders receiving 50% of sales and the three users immediately preceding a recipient in the distribution chain sharing in sales commissions. Buyers can also burn copies to CD and transfer titles to portable devices. SML's most recent offering lets music fans quickly put together a customized, legal music download website. Visitors can download songs and play them three times for free before being asked to buy them. Site owners earn 20% of all sales,

plus a share of pass-along sales. Weed's decentralized retailing strategy benefits artists and fans alike.

Sharman Networks Limited Sharman distributes the Kazaa Media Desktop (KMD) application, currently with more than 375 million downloads globally, the most widely distributed software in the world. Sharman further developed Kazaa Plus, the premium advertising-free version of KMD, which is offered by Serroph Holdings, B.V., under license from Sharman. Sharman's KMD application incorporates Altnet's TopSearch technology, which allows users to locate and download DRM-protected, licensed files for a fee.

SMARTguard Software Launched in 2003 to address issues related to the safe and legal use of computers, SMARTguard offers optional, easy-to-use, innovative software called "Blockster" that helps parents prevent children from accessing computer programs, including P2P applications, without appropriate supervision. Blockster issues an e-mail report when a restricted P2P program is launched, allowing parents the opportunity to monitor access. Any attempt to override the program's patent-pending advanced security features – including hacking the database or changing the password – will generate an alert to the parent. The program is easy to implement and is continuously building on itself as more people contribute to the program's database.

Sovereign Artists This Internet-savvy music label has embraced P2P distribution with the launch of Heart's "Jupiters Darling" through P2P networks.

SVC Financial SVC is a publicly-traded transaction management company that provides integrated financial services and value-added software to help its clients

accelerate sales. SVC has pioneered a scalable, integrated media and transaction management solution, the Mazarin Media Platform (MMP), a rich media application generator that allows virtually any company to rapidly deliver browser-based applications. MMP integrates highly secure SVC payment services with the Mazarin application generator, creating "smart" applications for sales, marketing, research, and promotional activities. SVC payment services provide a unique, cost-effective peer-to-peer (P2P) and mobile solution for cash-based consumers such as teens, students, or friends-and-family, for local and international reimbursement and remittance transactions. This enables companies to inspire consumers to make immediate, informed purchase decisions. SVC solutions have a broad range of applicability and provide tremendous value to clients in music and entertainment, political, non-profit, research and testing, as well as corporate and consumer marketing areas.

Trymedia Systems Founded in 1999, Trymedia is an Intel Capital funded company, headquartered in San Francisco, California with offices in Europe. Trymedia offers secure digital delivery services for a wide range of solutions dedicated to optimizing game and software sales for top-tier PC content developers and publishers. With ActiveMARK, Trymedia's digital distribution and DRM technology services suite, developers, publishers and distributors can securely distribute and sell PC games and software on CD/DVD, the web and P2P networks with a single solution. When consumers share ActiveMARK-enabled software with their friends, instead of preventing copies from being made, the duplicated files revert to trial mode and offer the next user an opportunity to purchase. Trymedia's catalog of ActiveMARK-enabled content is available to consumers worldwide.